# Citizens Without a Country: The Democratic Legitimacy Crisis of Non-Resident Birthright Voting in U.S. Federal Elections

Political Empire: Independent Observer - Volume II

Siddhartha Harsh Wardhan

Independent Observer Working Paper Series

December 30, 2025

*Draft prepared for SSRN-style circulation. All claims are analytic and normative unless otherwise stated.*

# Abstract

The United States operates one of the most expansive overseas voting regimes in the world, granting full federal electoral rights to citizens regardless of residency, taxation, civic integration, or exposure to domestic policy consequences. This includes citizens who have never lived in the United States and whose political preferences may be formed entirely within foreign institutional and media environments. This paper argues that unconditional enfranchisement of permanently non-resident birthright citizens creates a democratic legitimacy deficit by weakening the reciprocity between political authority and lived governance. Drawing on democratic theory, comparative electoral design, and peer-reviewed research on external voting, the paper shows that the U.S. model is an outlier among democracies. It proposes a three-criteria legitimacy framework (recent residency, federal tax contribution, or active military service) to restore alignment between political voice and political responsibility.



**Keywords:** birthright citizenship; non-resident voters; democratic legitimacy; expatriate voting; UOCAVA; electoral accountability; comparative electoral systems.

**JEL Codes:** D72; K10; H11; F22.

# Table of Contents

Abstract 2

1. Introduction 5

1.1 The Democratic Paradox: Voting Without Residency . . . . . 5

1.2 Why Non-Resident Birthright Voting Is Emerging as a Constitutional Problem . . . . . 5

1.3 Scope of the Paper . . . . . 6

2. The U.S. Overseas Voting Framework 8

2.1 Historical Evolution of Non-Resident Voting . . . . . 8

2.2 The Administrative Construction of the Non-Resident Electorate . . . . . 8

2.3 Conceptual and Legal Features . . . . . 8

3. Democratic Theory and the Collapse of Accountability 10

3.1 Consent of the Governed: The Foundational Principle . . . . . 10

3.2 The 'All Affected Interests' Principle and Its Inverse Problem . . . . . 10

3.3 Political Membership, Stakeholding, and Belonging . . . . . 10

3.4 Accountability and the Burden-Benefit Imbalance . . . . . 10

4. Comparative International Models of Non-Resident Voting 12

4.1 Comparative Baseline . . . . . 12

4.2 Europe and the Human-Rights Framing of Residency . . . . . 12

4.3 Anglophone Democracies: Time Limits and Connection Tests . . . . . 12

4.4 The U.S. as an Outlier in Comparative Data . . . . . 12

4.5 Synthesis for Legitimacy . . . . . 12

5. Consequences for U.S. Democracy 14

5.1 Electoral Distortion and the Weight of the Unaffected . . . . . 14

5.2 Informational Misalignment and Foreign Media Ecosystems . . . . . 14
5.3 Taxation Misalignment and Fiscal Legitimacy . . . . . 14
5.4 Security and Narrative Vulnerability . . . . . 14
5.5 The Moral Hazard of the Unaffected Voter . . . . . 14
5.6 Participation Gaps and Institutional Design . . . . . 15
6. A Proposed Legitimacy Framework for U.S. Federal Elections 16
6.1 A Three-Criteria Eligibility Model . . . . . 16
6.2 Justification of the Residency Criterion . . . . . 16
6.3 Justification of the Taxation Criterion . . . . . 16
6.4 The Military Service Exception . . . . . 16
6.5 Design Rationale: Inclusion with Accountability . . . . . 16
6.6 Compatibility with Existing Administrative Infrastructure . . . . . 17
7. Legal Feasibility, Constitutional Analysis, and Implementation Pathways 18
7.1 Congressional Authority Over Federal Elections . . . . . 18
7.2 Federal vs State Ballots . . . . . 18
7.3 Equal Protection and Neutral Criteria . . . . . 18
7.4 Due Process and Administrative Review . . . . . 18
7.5 Illustrative Draft Statutory Language (Federal Ballots Only) . . . . . 18
7.6 Implementation Pathway . . . . . 19
8. Conclusion: Rebuilding Democratic Responsibility in a Global Age 20
References (OSCOLA) 21

# 1. Introduction

## 1.1 The Democratic Paradox: Voting Without Residency

Modern constitutional democracies assume that political authority arises from the consent of those who live under the laws created by elected officials.[1] Yet the United States permits millions of non-resident citizens - including many who have never lived in the country and have limited civic integration - to vote in federal elections.[2] Under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the federal franchise can be extended without a residency requirement, without proof of continued domestic stake, and without exposure to the policy consequences that typically discipline electoral accountability.

This places the United States at the maximal end of what scholars describe as external enfranchisement. Pogonyi's typology of non-resident voting highlights that the core democratic dilemma is not expatriate voting per se, but the creation of electorates whose political power is detached from the governed population.[3] In that sense, the U.S. model resembles a vote without consequences: political influence can be exercised by individuals who do not experience domestic conditions in healthcare, taxation, policing, or cost of living.

Judicial and constitutional scholarship repeatedly returns to the same question: who is the polity that decides first-order political issues? Issacharoff frames this as a boundary problem of democratic decision-making - a problem that becomes acute when the electorate no longer overlaps with those governed by the resulting policies.[4] Within the Independent Observer framework, the same legitimacy fracture is described as a recurring pattern in systems where power and burden are uncoupled.[5]

## 1.2 Why Non-Resident Birthright Voting Is Emerging as a Constitutional Problem

The constitutional tension around non-resident birthright voting is intensifying for three reasons: population scale, the rise of inherited or purely formal citizenship connections, and the potential for decisive electoral impact in close contests.

### Scale and measurement uncertainty

Estimates of U.S. citizens living abroad vary widely. The U.S. Department of State has published an estimate of roughly nine million U.S. citizens overseas in its public-facing consular reporting, while FVAP's methodology-driven Overseas Citizen Population Analysis estimates 4.4 million U.S. citizens abroad in 2022, with approximately 2.8 million of voting age.[6] Even at the lower bound, the overseas electorate is larger than most U.S. states; at the upper bound, it approaches the population size of a major domestic region.

### Symbolic citizenship and weak civic integration

Global mobility, dual citizenship norms, and parentage-based citizenship transmission have created a category of citizens whose connection to the United States can be largely symbolic. This matters because political preferences are shaped through civic socialization: language exposure, institutional

contact, and lived experience within the policy environment. Detached citizenship complicates the traditional democratic expectation that voters understand the institutional architecture and social conditions of the polity they influence.[7]

### Decisive influence and legitimacy perception

In high-polarization contexts where victory margins are narrow, even small shifts in turnout can become outcome-determinative. Empirical research shows that institutional design choices (such as simplified absentee procedures or internet voting) can measurably change participation among citizens abroad.[8] Normative legitimacy concerns intensify when voters who are not exposed to consequences become pivotal in selecting leaders and shaping domestic policy. In European human rights analysis, residency limits are often defended as legitimacy-preserving rather than rights-violating, precisely because they align political voice with effective political membership.[9]

## 1.3 Scope of the Paper

This paper evaluates whether the enfranchisement of non-resident birthright citizens - especially never-residents - creates a democratic legitimacy deficit in U.S. federal elections. It examines: (i) the historical and legal evolution of U.S. overseas voting policies; (ii) political-theory frameworks regarding consent, stakeholding, and affected interests; (iii) comparative international models that condition non-resident voting on residency, registration, or ongoing connection; (iv) downstream consequences for electoral accountability, fiscal legitimacy, informational alignment, and vulnerability to external influence; and (v) a proposed three-criteria eligibility model (recent residency, federal tax contribution, or active military service) intended to restore alignment between political voice and political responsibility.

### Footnotes (Section 1)

1. John Locke, *Two Treatises of Government* (1689).

2. Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 USC § 20301 et seq.

3. Szabolcs Pogonyi, 'Four Patterns of Non-resident Voting Rights' (2014) 13(2) *Ethnopolitics* 122-140 (DOI: 10.1080/17449057.2013.846041).

4. Samuel Issacharoff, 'Democracy and Collective Decisionmaking' (2008) 6(2) *International Journal of Constitutional Law* 231.

5. Siddhartha Harsh Wardhan, *The Geography of Enslaved Wealth: How Resource-Rich Lands Produce Poor Societies* (Independent Observer - Political Empire Vol II, SSRN Working Paper Series, 2025).

6. U.S. Department of State, Bureau of Consular Affairs, 'Consular Affairs by the Numbers' (updated Jan 2020); Federal Voting Assistance Program (FVAP), *2022 Overseas Citizen Population Analysis* (released Sep 2023) (estimating 4.4 million U.S. citizens abroad in 2022 and ~2.8 million voting-age).

7. Siddhartha Harsh Wardhan, *The Closed Mind of the Superpower* (Independent Observer - Political Empire Vol II, SSRN Working Paper Series, 2025).

8. Micha Germann, 'Internet Voting Increases Expatriate Voter Turnout' (2021) 38(2) *Government Information Quarterly* 101560 (DOI: 10.1016/j.giq.2020.101560).

9. Julie Fraser, 'Inclusive Democracy: Franchise Limitations on Non-Resident Citizens as an Unjust Restriction of Rights under the European Convention on Human Rights' (2017) 33(84) *Utrecht Journal of International and European Law*

23-43 (DOI: 10.5334/ujiel.367).

# 2. The U.S. Overseas Voting Framework

## 2.1 Historical Evolution of Non-Resident Voting

The U.S. overseas voting system did not originate as a theory of transnational democracy. It began as a wartime accommodation designed to protect the voting rights of temporarily displaced residents, especially soldiers.[1] Over time, Congress transformed those accommodations into a durable electoral channel for citizens outside the territory, culminating in UOCAVA (1986), which required states to provide absentee ballots to eligible military and overseas citizens.[2] The Military and Overseas Voter Empowerment (MOVE) Act (2009) further modernized ballot transmission and timing requirements, strengthening overseas access as a matter of federal election administration.[3]

Political scientists observe that the major institutional expansion of external voting often occurs through technical reforms rather than explicit legitimacy debates. Pogonyi characterizes this path as a move toward maximalist external enfranchisement, where the category of eligible voters expands well beyond those with recent residence or substantive connection.[4] Fraser's analysis of European rights jurisprudence underscores that residency limitations are commonly viewed as legitimacy-preserving constraints rather than arbitrary restrictions, precisely because they preserve effective political membership.[5]

## 2.2 The Administrative Construction of the Non-Resident Electorate

Unlike many democracies, the U.S. system imposes no general statutory residency threshold for overseas voters. The result is an overseas electorate that can include long-term emigrants, never-residents, and inherited citizens whose civic formation occurred entirely outside U.S. institutions.

FVAP data illustrate both the scale and the participation gap: FVAP's 2022 Overseas Citizen Population Analysis estimates approximately 2.8 million voting-age citizens abroad, yet only about 94,927 votes were attributable to individuals with non-U.S. addresses in absentee ballot records for the 2022 general election, yielding an estimated voting rate of 3.4 percent among voting-age overseas citizens.[6] Even with low turnout, the existence of a large eligible pool raises legitimacy questions in close elections where marginal increases in participation can matter.

Research also suggests that when the costs of voting from abroad are reduced, turnout rises. Germann's study of Swiss cantons finds that internet voting measurably increases expatriate turnout among registered voters, indicating that institutional design can change diaspora participation.[7] Himmelroos finds that residents' attitudes toward external voting rights vary depending on the moral and practical frames used to justify those rights, a signal that legitimacy perceptions are sensitive to the perceived connection between voters and consequences.[8]

## 2.3 Conceptual and Legal Features

### Citizenship-based rather than residency-based eligibility

Most constitutional democracies treat residency as a practical proxy for political membership. In contrast, the U.S. system is primarily citizenship-based: legal nationality can function as the operative criterion, even for citizens whose lived social and political formation has occurred abroad.

### A weak contribution anchor

Where other democracies condition external voting on recent residence, registration in overseas constituencies, or time limits, the U.S. system does not generally condition the federal ballot on continued tax contribution or a recent-residency link. Comparative research on external voting shows that the design space is large - but that many states intentionally restrict or structure external voting to insulate domestic politics from external influence and to preserve accountability.[9]

### A growing global baseline for comparison

Recent data infrastructure has improved comparative analysis of external voting regimes. The EVRR dataset captures the adoption and implementation of extraterritorial voting rights and restrictions across 195 countries over 1950-2020, enabling clearer comparison of how states structure the franchise beyond territory.[10]

### Footnotes (Section 2)

1. Brian McKenzie, *Absentee Voting in the Civil War* (Cambridge University Press 2013).

2. UOCAVA, 52 USC § 20301 et seq.

3. Military and Overseas Voter Empowerment (MOVE) Act 2009, Pub L 111-84.

4. Pogonyi (n 3 in Section 1).

5. Fraser (n 9 in Section 1).

6. FVAP, *2022 Overseas Citizen Population Analysis* (released Sep 2023), including estimates of OCVAP and observed vote totals; FVAP Interactive Data Center, 'Overseas Citizens' (2022 estimates).

7. Germann (n 8 in Section 1).

8. Sanna Himmelroos, 'How Framing Impacts Attitudes about Electoral Rights for Non-Resident Citizens' (2025) *International Migration* (DOI: 10.1111/imig.13243).

9. Jean-Michel Lafleur, *Transnational Politics and the State: The External Voting Rights of Diasporas* (Routledge 2013).

10. Elizabeth Iams Wellman, Nathan Allen and Benjamin Nyblade, 'The Extraterritorial Voting Rights and Restrictions Dataset, 1950-2020' (2023) 56(6) *Comparative Political Studies* 897-929.

# 3. Democratic Theory and the Collapse of Accountability

## 3.1 Consent of the Governed: The Foundational Principle

The core normative premise of democratic legitimacy is that those subject to a government's authority must have a say in its formation.[1] This principle, developed across social-contract traditions, presupposes reciprocity: citizens accept authority, and the government governs those citizens within its jurisdiction.[2] When the electorate diverges substantially from the governed population, the legitimacy claim weakens because political power is exercised without corresponding exposure to the authority being allocated.

Non-resident birthright voting, especially for never-residents, strains this reciprocity. Baubock argues that democratic authority becomes conceptually fragmented when formal nationality substitutes for effective political membership and stakeholding.[3] Fraser's analysis of European Court of Human Rights jurisprudence similarly treats residency-linked limits as potentially legitimacy-preserving where they maintain a meaningful connection between electorate and polity.[4]

## 3.2 The 'All Affected Interests' Principle and Its Inverse Problem

A major debate in democratic theory concerns the 'all affected interests' principle (AAI): the idea that all persons affected by a political decision should have a voice in making it.[5] But the U.S. regime raises the inverse problem: it can enfranchise individuals who are not affected at all by many domestic policies because they are not subject to U.S. taxation, law enforcement, or domestic service delivery.

Goodin argues that extending voting beyond territorial membership requires a defensible account of how external individuals are affected by the internal polity's decisions; otherwise, the boundary of the demos becomes normatively unmoored.[6] If the affectedness link is weak or absent, the franchise begins to resemble symbolic participation rather than democratic self-government.

## 3.3 Political Membership, Stakeholding, and Belonging

Stakeholding theory distinguishes formal citizenship from political membership. Baubock's stakeholder account emphasizes that those entitled to vote are those who have an ongoing stake in the polity through residence, contribution, or durable life ties that make them persistently subject to the polity's decisions.[7] Where citizenship is treated as a portable legal identity detached from territorial presence, the franchise can be extended to 'detached citizens' whose political preferences may be formed in foreign civic and media systems.

Pogonyi's framework reinforces this: maximalist external enfranchisement regimes raise equality and accountability concerns because they can empower voters whose political orientation is formed by external contexts rather than domestic consequences.[8]

## 3.4 Accountability and the Burden-Benefit Imbalance

Democratic accountability presupposes a balance between benefits enjoyed (public goods, protections, political voice) and burdens borne (taxation, legal compliance, civic duties). Carens and Warren, among others, emphasize that legitimacy is endangered when political power is allocated without corresponding civic burdens, producing a burden-benefit imbalance that resident citizens experience as unfair.[9]

Empirical work on transnational politics shows that external electorates may vote in patterns misaligned with domestic interests, especially when they are shielded from the economic and social consequences of policy choices.[10] Within the Independent Observer framework, this pattern is treated as a recurring form of institutional hypocrisy: authority exercised without cost-bearing.[11]

## Footnotes (Section 3)

1. Locke (n 1 in Section 1).

2. Jean-Jacques Rousseau, *The Social Contract* (1762).

3. Rainer Baubock, *Transnational Citizenship: Membership and Rights in International Migration* (Edward Elgar 1994).

4. Fraser (n 9 in Section 1).

5. David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press 1995).

6. Robert E Goodin, 'Enfranchising All Affected Interests, and Its Alternatives' (2007) 35(1) *Philosophy & Public Affairs* 40-68 (DOI: 10.1111/j.1088-4963.2007.00098.x).

7. Rainer Baubock, 'Stakeholder Citizenship and Transnational Political Participation' (2003) 81 *International Migration Review* 777.

8. Pogonyi (n 3 in Section 1).

9. Joseph Carens, *The Ethics of Immigration* (Oxford University Press 2013); Mark Warren, *Democracy and Association* (Princeton University Press 2001).

10. Lafleur (n 9 in Section 2).

11. Wardhan, *Global Hypocrisy: How the G7 Summit Countries Economically Built the BRIC They Now Criticize* (Independent Observer - Political Empire Vol II, SSRN Working Paper Series, 2025).

# 4. Comparative International Models of Non-Resident Voting

## 4.1 Comparative Baseline

While the United States maintains a broad, citizenship-based overseas voting regime, comparative democracies more commonly condition non-resident voting on recent residence, registration, time limits, or separate overseas constituencies. Cross-national research documents steady expansion of extraterritorial voting rights, but also significant variation in the restrictions states use to preserve domestic accountability.[1] Pogonyi's typology emphasizes that the design question is not whether to enfranchise citizens abroad, but how to structure the franchise so that political voice remains tied to meaningful membership and does not undermine equality and accountability.[2]

## 4.2 Europe and the Human-Rights Framing of Residency

Across Europe, the most common justification for limiting long-term non-resident voting is that residency serves as a proxy for effective political membership. Fraser shows that within European Convention on Human Rights analysis, restrictions based on residence can be compatible with democratic rights where they serve legitimate aims such as preserving the integrity of the electoral process and ensuring meaningful connection between voters and the polity.[3] In practice, European systems use a mix of time limits, registration rules, and overseas constituencies to maintain an accountability anchor.

## 4.3 Anglophone Democracies: Time Limits and Connection Tests

A recurring comparative tool is the time-limited franchise. Historically, the United Kingdom limited parliamentary voting rights for long-term non-resident citizens, reflecting the belief that prolonged absence reduces policy exposure and civic literacy. Canada's five-year limit was struck down in *Frank v Canada (Attorney General)*, yet the case illustrates that the legitimacy logic of residence is widely recognized even when courts rule that a specific statutory limit is unconstitutional under a rights charter.[4] Australia conditions overseas voting on demonstrated connection and registration, reflecting a duty-based conception of electoral participation.

## 4.4 The U.S. as an Outlier in Comparative Data

Comparative datasets help place the U.S. regime in context. The EVRR dataset captures both rights and restrictions for non-resident voting across 195 countries, enabling systematic comparison across decades.[5] Even among countries that enfranchise diasporas, many impose procedural or temporal constraints that distinguish long-term non-resident citizens from resident electorates. By contrast, the U.S. model allows full federal voting eligibility without a general residency threshold, including for citizens who have never resided domestically.

## 4.5 Synthesis for Legitimacy

The comparative pattern supports the core legitimacy claim of this paper: democracies typically attempt to preserve a connection between voters and the consequences of governance. Where that connection is

weak, states often introduce restrictions - time limits, registration controls, or special representation - to mitigate electoral distortion and preserve political equality among those governed. The U.S. approach, by relying almost entirely on formal citizenship, is therefore not merely permissive; it is structurally exceptional.

## Footnotes (Section 4)

1. Lafleur (n 9 in Section 2).

2. Pogonyi (n 3 in Section 1).

3. Fraser (n 9 in Section 1).

4. *Frank v Canada (Attorney General)*, 2019 SCC 1 (Supreme Court of Canada).

5. Wellman, Allen and Nyblade (n 10 in Section 2).

# 5. Consequences for U.S. Democracy

## 5.1 Electoral Distortion and the Weight of the Unaffected

The most immediate consequence of enfranchising permanently non-resident birthright citizens is electoral distortion: elections are influenced by individuals who do not share the burdens of domestic governance. Democratic legitimacy depends on a 'shared fate' premise - voters and residents are jointly subject to the policies produced by elections. When that shared fate is absent, political power can be exercised without accountability to outcomes.

Pogonyi warns that maximalist non-resident voting can compromise democratic accountability and equality, particularly where external electorates are insulated from the costs of domestic policy choices.[1] This concern becomes salient in close elections, where marginal increases in overseas participation can influence outcomes even if overall turnout remains low.

## 5.2 Informational Misalignment and Foreign Media Ecosystems

Non-resident citizens often consume political information through foreign media ecosystems and local social contexts. Their political preferences may be shaped by narratives, incentives, and policy baselines that differ significantly from domestic realities. This can produce informational misalignment: voting decisions reflect external frames rather than lived exposure to domestic conditions.

Empirical work suggests that legitimacy perceptions are sensitive to framing: residents are less supportive of external voting rights when they perceive non-resident voters as uninformed, unexposed to consequences, or lacking stakeholding ties.[2]

## 5.3 Taxation Misalignment and Fiscal Legitimacy

A common legitimacy intuition is that political power should track civic burden. In the U.S., many overseas citizens have limited or no federal income tax liability depending on income sources and exclusions, yet they retain voting power over fiscal policy that domestic residents finance. This creates a burden-benefit imbalance: some voters can influence spending, taxation, and regulation without contributing proportionally to the public systems affected by those policies.

## 5.4 Security and Narrative Vulnerability

The argument here is not that overseas voting is inherently insecure, but that a polity cannot control the informational and political environments shaping voters who are embedded in other jurisdictions. To the extent external electorates become electorally salient, they also become targets for persuasion and narrative campaigns. This risk is heightened when eligibility extends to never-residents whose civic formation is entirely external.

## 5.5 The Moral Hazard of the Unaffected Voter

When voters do not experience the consequences of their choices, the democratic feedback loop weakens. Retrospective accountability - the tendency of voters to reward or punish incumbents based on experienced outcomes - presupposes exposure to outcomes. If exposure is absent, a moral hazard emerges: political decisions are costless for some and costly for others.

Healy and Malhotra's work on myopic voting illustrates how accountability mechanisms depend on voters experiencing policy outcomes; where experience is disconnected, democratic incentives can degrade.[3]

## 5.6 Participation Gaps and Institutional Design

FVAP's 2022 Overseas Citizen Population Analysis documents a substantial participation gap between the domestic Citizen Voting Age Population (CVAP) and the overseas Citizen Voting Age Population (OCVAP).[4] The existence of barriers and low participation does not eliminate legitimacy concerns; rather, it suggests that institutional reforms that lower barriers (such as electronic transmission or internet voting) could increase overseas influence over time, raising the stakes of eligibility design.

### Footnotes (Section 5)

1. Pogonyi (n 3 in Section 1).

2. Himmelroos (n 8 in Section 2).

3. Andrew Healy and Neil Malhotra, 'Myopic Voters and Natural Disaster Policy' (2009) 103(3) *American Political Science Review* 387.

4. FVAP, *2022 Overseas Citizen Population Analysis* (released Sep 2023), esp. participation-rate comparisons between OCVAP and CVAP.

# 6. A Proposed Legitimacy Framework for U.S. Federal Elections

## 6.1 A Three-Criteria Eligibility Model

To restore reciprocity between political voice and political responsibility without indiscriminately disenfranchising citizens abroad, this paper proposes a three-criteria eligibility model. A citizen would be eligible to vote in federal elections if they satisfy *any one* of the following:

- Recent U.S. residency: at least 12 cumulative months of U.S. residency within the prior 60 months.
- Federal tax contribution: filing a U.S. federal income tax return in the prior taxable year, or maintaining U.S.-sourced taxable income.
- Active military service: active-duty service in the U.S. Armed Forces abroad.

The model distinguishes between citizens with ongoing stakeholding ties (residence, fiscal contribution, or direct service under federal command) and citizens whose connection is purely formal. It is grounded in stakeholding theory: voting rights are strongest where a genuine stake exists in the polity's decisions.[1]

## 6.2 Justification of the Residency Criterion

Residency remains the most widely used proxy for political membership because it anchors political judgment in lived exposure: public services, regulatory constraints, social conditions, and the ordinary consequences of governance. A modest recent-residency window accommodates mobility while requiring some meaningful contact with domestic institutions. Comparative practice supports such a link.

## 6.3 Justification of the Taxation Criterion

A taxation pathway preserves voting rights for long-term non-resident citizens who remain economically bound to the United States. The aim is reciprocal: those who contribute to public finance retain a defensible claim to influence fiscal and policy decisions. Warren's burden-benefit framework supports this: democratic legitimacy weakens when political power is allocated without corresponding civic burdens.[2]

## 6.4 The Military Service Exception

Military personnel abroad are directly subject to U.S. federal authority, discipline, and risk. Their exposure to the consequences of U.S. policy is substantial, and any legitimacy framework should preserve their vote unequivocally.

## 6.5 Design Rationale: Inclusion with Accountability

The framework is intentionally permissive: any one of the criteria is sufficient. This preserves inclusion for citizens with real stakeholding ties, while tightening eligibility for citizens whose connection to the polity is purely symbolic.

## 6.6 Compatibility with Existing Administrative Infrastructure

The model can be implemented through existing systems: FVAP registration and ballot request processes, IRS status flags for tax filing, and Department of Defense verification for service members. It does not require a new federal agency; it requires a structured eligibility layer applied to federal absentee ballots.

### Footnotes (Section 6)

1. Baubock, 'Stakeholder Citizenship and Transnational Political Participation' (n 7 in Section 3).

2. Warren (n 9 in Section 3).

# 7. Legal Feasibility, Constitutional Analysis, and Implementation Pathways

## 7.1 Congressional Authority Over Federal Elections

The U.S. Constitution grants Congress substantial authority to regulate federal elections, including voter registration and ballot procedures. Under the Elections Clause (Article I, Section 4), Congress may 'make or alter' regulations governing the time, place, and manner of congressional elections. The Supreme Court has recognized broad federal preemption in this domain, including over state registration rules where federal statutes apply.[1]

## 7.2 Federal vs State Ballots

A key implementation feature is separability: Congress can apply an eligibility rule to *federal* ballots without dictating state and local voter qualifications. This is consistent with the Court's recognition that Congress can regulate the voting process for federal elections more extensively than for state and local elections.[2]

## 7.3 Equal Protection and Neutral Criteria

A residency-or-tax-or-service framework is facially neutral. It does not classify by race, religion, national origin, or other suspect categories. The state interest is also clear: preserving electoral legitimacy and democratic accountability by aligning political voice with meaningful stakeholding ties.

## 7.4 Due Process and Administrative Review

Eligibility criteria must be transparent and accompanied by an administrative review mechanism. Existing overseas voting processes already include registration, verification, and affirmation under penalty of perjury. A structured eligibility layer can be implemented with minimal additional friction if verification is limited to an eligible/ineligible flag rather than disclosure of underlying sensitive records.

## 7.5 Illustrative Draft Statutory Language (Federal Ballots Only)

**Federal Responsibility and Democratic Accountability Act (FRDAA) - draft excerpt**

**Section 1. Eligibility for Federal Ballots.** A United States citizen shall be eligible to vote in federal elections if the citizen meets any one of the following: (a) *Residency criterion*: the citizen has resided at least 12 cumulative months within the United States during the preceding 60 months; (b) *Federal tax criterion*: the citizen has filed a federal income tax return pursuant to 26 U.S.C. § 6012 during the preceding taxable year or maintains U.S.-sourced taxable income under 26 U.S.C. § 861; (c) *Military service criterion*: the citizen is an active-duty member of the United States Armed Forces, as verified through the Department of Defense.

**Section 2. Implementation.** The Federal Voting Assistance Program (FVAP) shall verify eligibility through an eligibility flag mechanism using (i) Department of Homeland Security residency records, (ii) Internal

Revenue Service filing-status confirmation, and (iii) Department of Defense service verification.

**Section 3. State Ballots Unaffected.** Nothing in this Act shall be construed to alter voter qualifications for state or local elections.

## 7.6 Implementation Pathway

Implementation can proceed in four steps: (i) update federal absentee registration forms to include the three eligibility pathways; (ii) establish inter-agency verification flags; (iii) provide a standardized appeals mechanism; and (iv) phase-in with a transition period to reduce inadvertent disenfranchisement. This approach leverages existing FVAP systems and minimizes new bureaucracy.

### Footnotes (Section 7)

1. *Arizona v Inter Tribal Council of Arizona, Inc*, 570 U.S. 1 (2013).

2. *Oregon v Mitchell*, 400 U.S. 112 (1970).

# 8. Conclusion: Rebuilding Democratic Responsibility in a Global Age

The United States' overseas voting system has drifted from a narrow accommodation for temporarily absent residents into a broad, citizenship-based franchise that can include never-resident citizens with minimal civic integration and no lived exposure to domestic policy consequences. Comparative democratic practice and modern democratic theory converge on the view that legitimacy depends on a meaningful connection between the electorate and the polity being governed. Where that connection is weak, democracies commonly use residency windows, time limits, registration rules, or structured external representation to preserve accountability.

A vote detached from consequences weakens the democratic feedback loop. It introduces a moral hazard in which political decisions are costless for some and costly for others, and it reduces the epistemic quality of elections by empowering judgments formed outside the domestic policy environment. None of this implies that overseas citizens should be categorically excluded. It implies that the franchise must be designed to preserve democratic reciprocity.

The three-criteria legitimacy framework proposed here (recent residency, federal tax contribution, or active military service) preserves inclusion for citizens with genuine stakeholding ties while limiting purely symbolic participation. It is compatible with Congress's authority over federal elections and implementable through existing administrative infrastructure. In a globally mobile world, democratic legitimacy requires not only formal citizenship but also some meaningful nexus to the consequences of governance.

### Footnotes (Section 8)

1. Baubock (n 6 in Section 3).

2. Goodin (n 6 in Section 3).

3. Lafleur (n 9 in Section 2).

# References (OSCOLA)

Arrighi, Jean-Thomas and others, 'A Comparative Overview of Electoral Residence Requirements' (European University Institute, EUDO Citizenship Observatory Report, 2013).

Baubock, Rainer, *Transnational Citizenship: Membership and Rights in International Migration* (Edward Elgar 1994).

Baubock, Rainer, 'Stakeholder Citizenship and Transnational Political Participation' (2003) 81 *International Migration Review* 777.

Carens, Joseph, *The Ethics of Immigration* (Oxford University Press 2013).

Earnest, David C, *Old Nations, New Voters: Nationalism, Transnationalism, and Democracy in the Era of Global Migration* (SUNY Press 2008).

Federal Voting Assistance Program (FVAP), *2022 Overseas Citizen Population Analysis* (Report, released Sep 2023).

Federal Voting Assistance Program (FVAP), 'Overseas Citizens' Interactive Data Center (2022 estimates).

Fraser, Julie, 'Inclusive Democracy: Franchise Limitations on Non-Resident Citizens as an Unjust Restriction of Rights under the European Convention on Human Rights' (2017) 33(84) *Utrecht Journal of International and European Law* 23-43 (DOI: 10.5334/ujiel.367).

Germann, Micha, 'Internet Voting Increases Expatriate Voter Turnout' (2021) 38(2) *Government Information Quarterly* 101560 (DOI: 10.1016/j.giq.2020.101560).

Goodin, Robert E, 'Enfranchising All Affected Interests, and Its Alternatives' (2007) 35(1) *Philosophy & Public Affairs* 40-68 (DOI: 10.1111/j.1088-4963.2007.00098.x).

Healy, Andrew and Malhotra, Neil, 'Myopic Voters and Natural Disaster Policy' (2009) 103(3) *American Political Science Review* 387.

Held, David, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press 1995).

Himmelroos, Sanna, 'How Framing Impacts Attitudes about Electoral Rights for Non-Resident Citizens' (2025) *International Migration* (DOI: 10.1111/imig.13243).

Issacharoff, Samuel, 'Democracy and Collective Decisionmaking' (2008) 6(2) *International Journal of Constitutional Law* 231.

Lafleur, Jean-Michel, *Transnational Politics and the State: The External Voting Rights of Diasporas* (Routledge 2013).

Locke, John, *Two Treatises of Government* (1689).

McKenzie, Brian, *Absentee Voting in the Civil War* (Cambridge University Press 2013).

Pogonyi, Szabolcs, 'Four Patterns of Non-resident Voting Rights' (2014) 13(2) *Ethnopolitics* 122-140 (DOI: 10.1080/17449057.2013.846041).

Rousseau, Jean-Jacques, *The Social Contract* (1762).

Umpierrez de Reguero, Ignacio and others, 'Special Representation of Non-Resident Citizens' (2024) *Representation*.

United States, Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 USC § 20301 et seq.

United States, Military and Overseas Voter Empowerment (MOVE) Act 2009, Pub L 111-84.

United States Department of State, Bureau of Consular Affairs, 'Consular Affairs by the Numbers' (updated Jan 2020).

Wellman, Elizabeth Iams, Allen, Nathan and Nyblade, Benjamin, 'The Extraterritorial Voting Rights and Restrictions Dataset, 1950-2020' (2023) 56(6) *Comparative Political Studies* 897-929.

Warren, Mark, *Democracy and Association* (Princeton University Press 2001).

*Arizona v Inter Tribal Council of Arizona, Inc*, 570 U.S. 1 (2013).

*Oregon v Mitchell*, 400 U.S. 112 (1970).

*Frank v Canada (Attorney General)*, 2019 SCC 1.

Wardhan, Siddhartha Harsh, *The Geography of Enslaved Wealth: How Resource-Rich Lands Produce Poor Societies* (Independent Observer - Political Empire Vol II, SSRN Working Paper Series, 2025).

Wardhan, Siddhartha Harsh, *The Closed Mind of the Superpower* (Independent Observer - Political Empire Vol II, SSRN Working Paper Series, 2025).

Wardhan, Siddhartha Harsh, *Global Hypocrisy: How the G7 Summit Countries Economically Built the BRIC They Now Criticize* (Independent Observer - Political Empire Vol II, SSRN Working Paper Series, 2025).

SSRN Author Page (Siddhartha Harsh Wardhan, Author ID 7768604).